

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WHITNEY NATIONAL BANK

Plaintiff,

v.

THOMAS J. MILLS and SAFETY GUIDE
OF ALABAMA, LLC.

Defendants.

Case No.: 2:07-CV-414-MEF

MOTION FOR LEAVE TO FILE
NOTICE OF CORRECTION

Mindful of the letter and spirit of Rule 3.3 of the Alabama Rules of Professional Conduct, the undersigned counsel for Thomas J. Mills moves this Honorable Court for leave to file his correction of an inadvertent misstatement made in this Defendant's Brief in Support of Motion to Dismiss (Doc. 37). In its brief, the undersigned on behalf of Defendant Mills cited the case of CIT Financial Services, Inc. v. Bowler, 537 So.2d 4 (Ala. 1988). The undersigned erroneously argued that in CIT Financial, "the Alabama Supreme Court held that the trial court erred in failing to instruct the jury on ratification." Counsel for Whitney Bank respectfully but correctly pointed out that error in Plaintiff's Brief in Response to the Motion to Dismiss, Page 10, note 5 (see Doc. 39).

After review and study of the research which the undersigned had conducted and was utilizing at the writing of the brief, the only explanation that can be had is that the undersigned simply erroneously dictated the conclusion of the CIT Financial case by sheer error.

The undersigned acknowledges the ABA Model Rules of Professional Conduct and its requirement that a lawyer shall not knowingly fail to correct a false statement of law previously made to a tribunal by the lawyer. See e.g. Rules of Professional Conduct, 3.3(a)(1) “Candor Toward the Tribunal.” It is in that spirit that the undersigned files this Motion for Leave to Amend.¹

The undersigned mistakenly represented the holding in the CIT Financial Services case as reversing the trial court. In reality, the trial court was held to be correct in its decision to refuse the requested charge on ratification. But, the rationale for that affirmance was because the only claims submitted to the jury were negligence and wantonness. In other words, the logical implication of the holding in CIT Financial is that it would have been error for the trial court to refuse the ratification instruction had the case been other than negligence or wantonness. The undersigned failed to make the argument clear in his earlier filing in that there are no negligence and wantonness claims being pursued here; therefore, the holding in CIT Financial supports this Defendant’s argument. The undersigned poorly and mistakenly articulated the reason for the application of the ruling in the CIT Financial case.

The undersigned respectfully requests that this Honorable Court 1) grant leave to amend Defendant Mills’ previously filed Brief in Support of Motion to Dismiss in order that the assertion regarding the holding in the CIT Financial case be corrected² and 2) consider this Motion to be this Defendant’s correction if and once leave is granted.

¹ It is likewise understood that Alabama’s Rule 3.3 does not contain the specific language referenced herein pertaining to the affirmative duty to correct a false statement of law previously made. Nonetheless, the undersigned believes that the spirit of Alabama’s Rules of Professional Conduct contemplate such a requirement and the undersigned gladly admits that obligation.

² The undersigned also commends the professional courtesy of opposing counsel in his respectful argument pointing out the undersigned’s erroneous assertion.

Respectfully Submitted,

/s/ Jack B. Hinton, Jr.
Jack B. Hinton, Jr. (HIN020)
Attorney for the Defendant Thomas J. Mills

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was served on the following by placing a copy of same in the United States mail, postage prepaid and properly addressed this 21st of January, 2008.

Gregory C. Cook
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/s/ Jack B. Hinton, Jr.
Jack B. Hinton, Jr.